

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

LINDA A. SMITH,

Plaintiff,

vs.

**MADISON MUTUAL INSURANCE CO. &
RICK SHOGER,**

Defendants.

No. 05-CV-00142-DRH

ORDER

HERNDON, District Judge:

This matter comes before the Court on Defendant Rick Shoger's May 13, 2005 Motion to Dismiss Counts I, II, & III of Plaintiff's Complaint pursuant to **FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)**. (Doc. 8). Shoger, President of Madison Mutual Insurance Company, argues that he is not an "employer" as defined by Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, or the Illinois Whistleblower Act. Pursuant to **LOCAL RULE 7.1(c)**, the Court considers Plaintiff's failure to timely respond as an admission on the merits of the motion.¹

Accordingly, the Court **GRANTS** Shoger's motion to dismiss. (Doc. 8). The Court **DISMISSES with prejudice** Counts I, II, & III of Plaintiff's Complaint as they pertain to Shoger. Shoger is no longer a party to this action.

IT IS SO ORDERED.

Signed this 20th day of June, 2005.

/s/ David RHerndon
United States District Judge

¹**LOCAL RULE 7.1(c)** provides, in pertinent part, "[a]n adverse party shall have **thirty (30) days** after the service (see FED. R. CIV. P. 6) of the movant's motion in which to serve and file an answering brief. Failure to timely file an answering brief to a motion may, in the court's discretion, be considered an admission of the merits of the motion."